

EXHIBIT A

BRYAN CAVE LEIGHTON PAISNER LLP (No. 00145700)
 Lawrence G. Scarborough (No. 006965) (lgscarborough@bclplaw.com)
 Jessica R. Maziarz (No. 027353) (jessica.maziarz@bclplaw.com)
 Teresa P. Meece (No. 032071) (teresa.meece@bclplaw.com)
 Julie M. Birk (No. 033908) (julie.birk@bclplaw.com)
 Two North Central Avenue, Suite 2100
 Phoenix, Arizona 85004-4406
 Telephone: (602) 364-7000

Attorneys for Plaintiffs

[Additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

League of Women Voters of Arizona; Mi
 Familia Vota Education Fund; and Promise
 Arizona, on behalf of themselves, their
 members, and all others similarly situated,

Plaintiffs,

vs.

Michele Reagan, in her official capacity as
 Secretary of State for the State of Arizona,

Defendant.

No. CV-18-02620-PHX-JAT

[PROPOSED]
 PLAINTIFFS' FINDINGS OF FACT
 AND CONCLUSIONS OF LAW

In accordance with the Court's Order Setting Preliminary Injunction Hearing (8/22/18), Plaintiffs League of Women Voters of Arizona, Mi Familia Vota Education Fund, and Promise Arizona propose the following Findings of Fact and Conclusions of Law:

1. This case concerns the failure by Defendant Michele Reagan, in her official capacity as the Secretary of State for the State of Arizona ("SOS"), to comply with the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 *et seq.* Pending before the Court are Plaintiffs' Complaint (8/18/18) ("Complaint") and Motion for Preliminary Injunction (8/18/18) ("Motion").

2. As Plaintiffs more fully set forth in their Motion, the SOS is violating Section 5(d) of the NVRA, 52 U.S.C. § 20504. Section 5(d) governs how the state must deal with changes of address, so as to ensure that voter registration records of registered voters are kept

1 up to date, promoting the accuracy of the voter rolls and preventing disenfranchisement of
2 eligible voters. *Id.* Contrary to the express statutory requirement, 52 U.S.C. § 20504(d), the
3 SOS does not automatically update a voter's registration address when the voter reports a
4 change of address to the Arizona Department of Transportation ("ADOT") or its Motor
5 Vehicle Division ("MVD") (collectively, "ADOT/MVD"). When a change of address
6 reported to ADOT/MVD is reflected only in a voter's driver record, and not in their voter
7 registration record, the consequences can include the rejection of provisional ballots cast by
8 this voter at the polling location for the non-updated voter registration address and the non-
9 receipt of an Early Ballot. To remedy these consequences in advance of the November 6,
10 2018 general election, Plaintiffs have applied to this Court for preliminary relief.

11 3. In response, Defendant asserts that Plaintiffs' claim amounts to a "technical
12 violation" of the NVRA and that Plaintiffs do not meet their burden of showing that the harm
13 this violation causes outweighs the burdens their suggested relief would impose on
14 Defendant as well as Arizona's county recorders. Specifically, Defendant asserts that the
15 relief Plaintiffs seek is "unduly burdensome" on the basis of cost, will result in confusion
16 among what Defendant contends is a "small" number of affected voters, and is unlikely to
17 remedy the "technical violation."

18 4. In the Motion and the Reply in Support of Plaintiffs' Motion for Preliminary
19 Injunction (9/6/18) ("Reply"), Plaintiffs maintain that, despite Defendant's admitted ongoing
20 violations of federal law, she refuses to do anything before the federal election on November
21 6, 2018 to remedy the harm her failures are causing Plaintiffs and Arizona voters. Further,
22 Plaintiffs argue that the SOS fails to establish that any preliminary injunction factors weigh
23 in her favor. Accordingly, to remedy the ongoing violations, Plaintiffs seek a preliminary
24 injunction requiring the SOS to: (a) instruct county recorders to count out of precinct
25 ("OOP") provisional ballots cast by affected voters, and to provide appropriate poll worker
26 training; and (b) mail a notice to individuals who changed their address with ADOT/MVD
27 since the last federal election.

28 5. The Court held a hearing on September 12, 2018.

6. Pursuant to the hearing, the Court hereby finds and concludes as follows:

FINDINGS OF FACT

Background

7. In passing the NVRA, Congress found: (1) a citizen's right to vote is a fundamental right; (2) the state, local, and federal governments have a duty to promote the exercise of that right; and (3) "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities." 52 U.S.C. § 20501(a).

8. According to Congress, the purposes of the NVRA are:

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office; (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure that accurate and current voter registration rolls are maintained.

52 U.S.C. § 20501(b).

9. Section 5 of the NVRA, 52 U.S.C. § 20504 ("Section 5"), provides that certain voter registration services must be provided during all motor vehicle driver's licenses initial application, any renewal application, or change of applicant's address (each a "Covered Transaction"). 52 U.S.C. § 20504(a)(1).

10. As used in the NVRA, "the term 'motor vehicle driver's license' includes any personal identification document issued by a State motor vehicle authority." 52 U.S.C. § 20502(3). For simplicity here, these personal identification documents will be referred to collectively as a "Driver's License."

11. Section 5(d) requires that "[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes." 52 U.S.C. § 20504(d). In other words, a

1 change of address for a Driver's License shall serve as a change of address for voter
2 registration *unless* the applicant "opts out."

3 12. A State's motor vehicle authority is responsible for transmitting voter
4 registration information resulting from each Covered Transaction to the appropriate State
5 election official "not later than 10 days after the date of acceptance," and if the application is
6 accepted within 5 days before the last day of voter registration, "not later than 5 days after
7 the date of acceptance." 52 U.S.C. § 20504(e)(1)-(2).

8 13. The NVRA requires that each State "send notice to each applicant of the
9 disposition" of each application." 52 U.S.C. § 20507(a)(2).

10 14. The NVRA requires that "[e]ach State shall designate a State officer or
11 employee as the chief State election official to be responsible for coordination of State
12 responsibilities" under the NVRA. 52 U.S.C. § 20509.

13 15. Defendant, as Secretary of State for the State of Arizona, is Arizona's chief
14 election officer (A.R.S. § 16-142) and therefore the state official charged with coordinating
15 the responsibilities of the State under the NVRA, including taking all possible steps to ensure
16 compliance with the statute. 52 U.S.C. §§ 20504, 20509; A.R.S. § 16-112(B).

17 16. ADOT/MVD is Arizona's motor vehicle authority within the meaning of the
18 NVRA. 52 U.S.C. §§ 20502(3), 20504; A.R.S. §§ 16-112(B), 16-142.

19 **Defendant's Violations of the NVRA**
20 **During Change of Address Transactions**

21 **A. In-Person Transactions.**

22 17. A client who wishes to apply in person for an Arizona Driver's License must
23 complete the ADOT Driver License/Identification Card Application. [Complaint, ¶ 39;
24 Declaration of Counsel in Support of Plaintiffs' Application for an Order to Show Cause
25 Why a Preliminary Injunction Should Not Be Entered (8/18/18) ("Motion Counsel Decl."),
26 Ex. C] A client possessing an Arizona Driver's License who wants to report a change of
27 address in person may do so by completing either the ADOT Driver License/Identification
28 Card Application or the ADOT Duplicate/Credential Update Application (together, the

1 “Forms”). [Complaint, ¶ 40; Motion Counsel Decl., Ex. E] In either case, the client must
2 provide a residential address. [Motion Counsel Decl., Exs. C-E]

3 18. The Forms contain a question asking clients if they would like to register to
4 vote or update an existing voter registration (“Voter Preference Question”), with boxes
5 marked “Yes” and “No.” [*Id.*]

6 19. ADOT/MVD regularly provides to Defendant all of the address-update
7 information it has collected from clients in the form of a delimited text file. [Complaint,
8 ¶ 35; Motion Counsel Decl., Ex. B at 2, 5]

9 **B. Remote Transactions.**

10 20. Individuals can also submit an address change to ADOT/MVD through
11 ADOT/MVD’s Service Arizona website, <https://servicearizona.com/> (“Service AZ”). [See
12 Complaint, ¶¶ 41-42]

13 21. When an individual submits a change of address to ADOT/MVD through
14 Service AZ, ADOT/MVD transmits the information to Defendant. [Complaint, ¶¶ 35-36;
15 Motion Counsel Decl., Ex. B at 2]

16 22. After the individual submits a change of address to ADOT/MVD through
17 Service AZ, a link appears which, if followed, leads to a separate voter registration page. In
18 order to update the voter registration address, the individual must click on this link, and fill
19 out a new voter registration form. The individual must perform this additional step—filling
20 out a new voter registration form and once again providing the address information just
21 provided to ADOT/MVD. The effect of this requirement is that an individual must “opt in”
22 to have their voter registration address updated. [Complaint, ¶ 42; Motion Counsel Decl.,
23 Ex. G]

24 **SOS Failures**

25 23. Defendant does not currently use the address-update information provided by
26 ADOT/MVD to automatically update the voter registration address of individuals who are
27 registered voters, unless the individual has selected “Yes” in response to the Voter
28 Preference Question—meaning clients who “opt in.” [Complaint, ¶¶ 36-37; Motion Counsel

1 Decl., Ex. F]

2 24. Defendant similarly fails to automatically update the voter registration
3 addresses of individuals who submit an address change through Service AZ. [Complaint, ¶¶
4 41-42; Motion Counsel Decl., Ex. F]

5 **Impact of Defendant's Failure to Update Voter Registration Addresses**

6 25. Under Arizona law, if a voter has changed residence, they are required to vote
7 in the polling location associated with their new address. A.R.S. §§ 16-122, 16-135, 16-
8 584(C).

9 26. A voter who moves and whose voter registration address information is not
10 updated before the last day of voter registration must cast a provisional ballot. *See* A.R.S.
11 §§ 16-135(B), 16-584(B).

12 27. If a voter's new residential address is within the same Arizona county as the
13 old address, the voter's provisional ballot will be counted only if the voter casts their ballot
14 at the polling location corresponding to their new residential address. A provisional ballot
15 cast at the polling location corresponding to a voter's old residential address (called an "out-
16 of-precinct" ballot) will not be counted, for local, state, or federal races. *See* A.R.S. §§ 16-
17 135(D), 16-584(D).

18 28. If a voter moves from one county to another within Arizona and does not have
19 an updated voter registration address that corresponds to their new residential address, their
20 provisional ballot will not be counted at all—that provisional ballot will be discarded
21 whether cast in the voter's old or new precinct. *See* A.R.S. §§ 16-584(E).

22 29. Because Defendant does not update address information, voters are not notified
23 by mail of the location of the polling place that corresponds to their new address. *See* 52
24 U.S.C. § 20507(a)(2).

25 30. In addition, because Defendant does not update address information, affected
26 voters who are enrolled in the Permanent Early Voting List ("PEVL") will not receive their
27 Early Ballot via mail at their correct address. These ballots are sent by non-forwardable mail
28 and so, if sent to an incorrect address, will be returned to the election official. *See*

1 *Democratic Nat'l Comm. v. Reagan*, No. CV-16-01065-PHX-DLR, 2018 WL 2191664, at
2 *22 (D. Ariz. May 10, 2018).

3 31. Voters whose addresses have not been updated because of Defendant's failure
4 to comply with the NVRA will not receive their Early Ballot or will face additional burdens
5 locating the correct polling location, and some of these voters will be completely
6 disenfranchised.

7 32. Defendant has publicly stated that more than 500,000 Arizonans have been
8 affected by her NVRA violations relating to in-person and online change of address
9 transactions. [Motion Counsel Decl., Ex. F at 2]

10 **Notice Letter**

11 33. Plaintiffs sent a letter to Defendant dated November 14, 2017, notifying her
12 that she, along with the Arizona Department of Economic Security ("DES"), the Arizona
13 Health Care Cost Containment System ("AHCCCS," and together with DES, the
14 "Agencies"), and ADOT/MVD, was in violation of several provisions of the NVRA (the
15 "Notice Letter"). [*Id.*, Ex. A; *see also* 52 U.S.C. § 20510(b)(1)] The Notice Letter informed
16 Defendant that voters who updated the address associated with their driver license using
17 ADOT/MVD's change-of-address processes were not being provided with the voter
18 registration services required under the NVRA. [*Id.*]

19 34. The 90-day period provided by the NVRA for the Defendant to remedy the
20 violations prior to facing suit expired on February 12, 2018—more than six months ago.
21 [*Id.*; 52 U.S.C. § 20510(b)(2)]

22 35. Defendant has yet to cure the violations alleged in the Notice Letter. [Motion
23 Counsel Decl., Ex. F]

24 **Plaintiffs' Memorandum of Understanding with ADOT/MVD**

25 36. On August 14, 2018, Plaintiffs executed an Interim Memorandum of
26 Understanding ("MOU") with ADOT/MVD and the Agencies. [*Id.*, Ex. B]

27 37. ADOT/MVD has agreed to make necessary changes to the Forms and related
28 procedures in order to comply with the NVRA, including providing an "opt-out" checkbox to

1 allow an ADOT/MVD client to choose that their driver's license address change not be
2 applied to their voter registration. ADOT/MVD's prospective changes will provide relief
3 only for voters who engage in Covered Transactions in the future and only if Defendant
4 changes her procedure for processing change-of-address information.

5 38. ADOT/MVD has also agreed to provide any data necessary to allow Defendant
6 to comply with any order of this Court to enable the affected voters—those who reported a
7 change of address during a Covered Transaction either online or in person since November
8 9, 2016—to participate in the November 6, 2018 federal election. [Motion Counsel Decl.,
9 Ex. B at 5]

10 **November 6, 2018 Election**

11 39. The 2018 General Election is a federal election and will take place on
12 November 6, 2018. [<https://azsos.gov/elections/elections-calendar-upcoming-events>;
13 <https://apps.arizona.vote/electioninfo/elections/2018-general-election/federal/1350/4/0>]

14 40. The voter registration deadline in Arizona for the 2018 General Election is
15 October 9, 2018. [<https://azsos.gov/elections/elections-calendar-upcoming-events>]

16 41. Early Ballots will be mailed to voters on October 10, 2018. [*Id.*]

17 **Plaintiffs**

18 **A. League Of Women Voters Of Arizona.**

19 42. The League of Women Voters of Arizona (the "League") is a non-profit
20 organization that encourages informed and active participation in the democratic process.
21 The League has five chapters in Arizona and approximately 850 members. [Motion, Ex. 1,
22 ¶ 3]

23 43. The League offers a variety of voter education programs to its members and
24 the public on a range of issues, including producing a voter guide to inform voters about
25 Arizona ballot measures and hosting candidate forums for races. [*Id.*, ¶ 5]

26 44. The League also encourages voter registration among all eligible individuals
27 by conducting voter registration drives, including drives targeted at low-income individuals
28 who more frequently move and change addresses. [*Id.*, ¶¶ 7, 9]

1 45. In addition to registering new voters, these voter registration drives also
2 include efforts to assist voters with updating their voter registration address. [*Id.*, ¶ 10]

3 46. The League is diverting resources away from the other election-related
4 activities critical to its mission as a result of the Defendant's failure to comply with the
5 NVRA. [*Id.*, ¶¶ 10-11, 13-15]

6 47. The League has at least one member who has updated her Driver's License
7 address with ADOT/MVD and has been harmed by Defendant's failure to update her address
8 for voting purposes. The League also has members who are at risk of being harmed by
9 Defendant's NVRA violations when they move in the future. [*Id.*, ¶ 12]

10 48. Paul Wade is a member of the League. He updated his Driver's License
11 address online through Service AZ. Defendant subsequently failed to automatically update
12 his voter registration address and Mr. Wade had to again access Service AZ and re-enter the
13 information he had previously provided to ADOT/MVD in order to update his voter
14 registration address. [Reply, Ex. A, ¶¶ 4-8]

15 49. Khalil Rushdan is a member of the League. He updated his Driver's License
16 address in person with ADOT/MVD. Defendant subsequently failed to automatically update
17 his voter registration address. [*Id.*, Ex. B, ¶¶ 4-8]

18 50. Cindy Hans is a board member of the League and the state liaison for the
19 League of Women Voters of Metro Phoenix. She updated her Driver's License address
20 online through Service AZ. Defendant failed to automatically update her voter registration
21 address and Ms. Hans had to access the Service AZ and re-enter the information she had
22 previously provided to ADOT/MVD in order to update her voter registration address. [Joint
23 Prehearing Statement at 7 (Ex. 13)]

24 **B. Mi Familia Vota Education Fund.**

25 51. Mi Familia Vota Education Fund ("Mi Familia Vota") is a national non-profit
26 organization working to unite the Latino community and its allies to promote social and
27 economic justice through increased civic participation. Mi Familia Vota has approximately
28 6,000 members in Arizona. [Motion, Ex. 2, ¶ 3]

1 52. Mi Familia Vota engages in large-scale voter registration campaigns focused
2 on individuals aged 18 to 30 in Arizona—especially in counties with large Latino
3 populations. Mi Familia Vota also expects to engage in online, email, social media, and mail
4 campaigns, and expects to spend between \$500,000 and \$1 million on voter registration
5 programs in Arizona in 2018. [*Id.*, ¶¶ 7, 11]

6 53. In addition to registering new voters, these voter registration drives also
7 include efforts to assist voters with updating their voter registration address. The
8 organization will also spend time and resources on a text messaging campaign to assist
9 voters with updating their voter registration records, including address changes. [*Id.*, ¶¶ 10-
10 11]

11 54. Mi Familia Vota is diverting resources away from the other election related
12 activities critical to its mission as a result of Defendant’s violation of the NVRA. [*Id.*, ¶¶ 12-
13 14]

14 55. Mi Familia Vota has at least one member who has updated her Driver’s
15 License address with ADOT/MVD and has been harmed by Defendant’s failure to update
16 her residence address for voting purposes. Mi Familia also has members who are at risk of
17 being harmed by Defendant’s NVRA violations when they move in the future. [*Id.*, ¶ 13]

18 **C. Promise Arizona.**

19 56. Promise Arizona (“Promise Arizona”) is an organization seeking to positively
20 impact Latino and immigrant communities by building leaders, encouraging sustained civic
21 participation, and engaging with the political process for positive change. It primarily targets
22 underserved, low-income, and Latino populations. Promise Arizona has approximately
23 1,000 members, 1,500 volunteers, and six employees. [*Id.*, Ex. 3, ¶¶ 3-4, 8]

24 57. Promise Arizona focuses heavily on voter registration, and has a history of
25 registering large numbers of voters each year. Promise Arizona also conducts other voter
26 education programs, and incorporates voter registration into those programs. [*Id.*, ¶¶ 7-9]

27 58. Two of Promise Arizona’s six employees work on voter registration activities
28 full time. In preparation for the 2018 election, Promise Arizona plans to increase its voter

1 registration and engagement activities and to hire additional employees. [*Id.*, ¶ 4]

2 59. In addition to registering new voters, these voter registration drives also
3 include efforts to assist voters with updating their voter registration address. [*Id.*, ¶ 11]

4 60. Promise Arizona has at least one member who has updated her Driver's
5 License address with ADOT/MVD and has been harmed by Defendant's failure to update
6 her residence address for voting purposes. Promise Arizona also has members who are at
7 risk of being harmed by Defendant's NVRA violations when they move in the future. [*Id.*,
8 ¶ 13]

9 CONCLUSIONS OF LAW AND ANALYSIS

10 Jurisdiction and Venue

11 61. The Court has jurisdiction over the subject matter of this action pursuant to 28
12 U.S.C. §§ 1331, 1343; 52 U.S.C. § 20510(b)(2).

13 62. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2)
14 because a substantial part of the events giving rise to the claim occurred in this district.

15 63. The Court has personal jurisdiction over Defendant because "she is sued in her
16 official capacity as an elected official of Arizona in which she resides." *Arizona Democratic*
17 *Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL 6523427, at *5 (D. Ariz. Nov. 3,
18 2016).

19 64. This Court has jurisdiction to grant both declaratory and injunctive relief under
20 28 U.S.C. §§ 2201, 2202; 52 U.S.C. § 20510(b)(2); Fed. R. Civ. P. 65.

21 Plaintiffs Have Standing

22 65. A plaintiff has Article III standing if: "(1) he or she has suffered a concrete
23 and particularized injury to a cognizable interest, (2) which is fairly traceable to the
24 challenged action of the defendant, and (3) which likely can be redressed by a favorable
25 decision." *National Council of La Raza v. Cegavske*, 800 F.3d 1032, 1039 (9th Cir. 2015)
26 (quoting *Bennett v. Spear*, 520 U.S. 154, 167 (1997)).

27 66. All three Plaintiffs have established standing because they have suffered
28 injuries that are cognizable, traceable to the defendants, and able to be redressed if injunctive

1 relief is entered by this Court.

2 67. The Court may consider declarations in its evaluation of a motion for
3 preliminary injunction. *Best W. Int'l, Inc. v. Patel*, 523 F. Supp. 2d 979, 985, 991-92 (D.
4 Ariz. 2007) (granting request for preliminary injunction that was supported in part by
5 declarations).

6 **A. Organizational Standing.**

7 68. Plaintiffs have established that their respective organizations have been forced
8 to divert substantial resources away from other aspects of their organizational purpose to
9 address Defendant's failure to automatically update voter registrations as required under
10 Section 5.

11 69. This "diversion-of-resources" injury is sufficient to establish organizational
12 standing. *See, e.g., La Raza*, 800 F.3d at 1032, 1040 ("Such concrete and demonstrable
13 injury to the organization's activities—with the consequent drain on the organization's
14 resources—constitutes far more than simply a setback to the organization's abstract social
15 interests") (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)); *see*
16 *also Havens*, 455 U.S. at 379 (noting that where defendant's conduct causes an organization
17 to drain resources from its other priorities "there can be no question that the organization has
18 suffered injury in fact"); *see also Georgia State Conference of NAACP v. Kemp*, 841 F.
19 Supp. 2d 1320, 1336 (N.D. Ga. 2012) (plaintiff's allegations that it expended resources—
20 which it would have used on other projects—to register voters who should have been
21 registered by the state "plainly satisfy the injury prong of the Article III test for standing").

22 70. Plaintiffs have shown that their diversion of resources is attributable to
23 Defendant. *See Arcia v. Florida Secretary of State*, 772 F.3d 1335, 1341-42 (11th Cir. 2014)
24 (finding organizational standing when organizational plaintiffs "submitted affidavits showing
25 . . . they had diverted resources to address" challenged election law); *National Coal. for*
26 *Students with Disabilities Educ. & Legal Def. Fund v. Scales*, 150 F. Supp. 2d 845, 850 (D.
27 Md. 2001) ("the allegations that the [defendant]'s noncompliance frustrates these goals and
28 requires the organization to expend resources in facilitating the registration of disabled

persons that they otherwise would spend in other ways is sufficient to show an actual or threatened injury in fact that is fairly traceable to the alleged illegal action and is likely to be redressed by a favorable court decision ordering injunctive relief”). *See also Common Cause Ind. v. Lawson*, Case No. 1:17-cv-03936-TWP-MPB, 2018 WL 2762552, at *10 (S.D. Ind., June 8, 2018) (Secretary of State “ultimately responsible for the state’s compliance with the NVRA,” therefore alleged injuries “fairly traceable” to the Defendant).

71. Plaintiffs’ injuries can be redressed by a favorable decision. An injunction ordering relief specifically tailored to correcting past violations will ensure that all registered Arizona voters can participate in the upcoming general election. *See Scales*, 150 F. Supp. 2d at 850.

B. Associational Standing.

72. Plaintiffs have established associational standing by demonstrating that: (1) their members would otherwise have standing to sue in their own right; (2) the interests they seek to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977) (affirming grant of requested injunctive relief).

73. Organizations need not identify a member by name to have standing. “[W]here it is relatively clear, rather than merely speculative, that one or more members have been or will be adversely affected by a defendant’s action, and where the defendant need not know the identity of a particular member to understand and respond to an organization’s claim of injury, we see no purpose to be served by requiring an organization to identify by name the member or members injured.” *La Raza*, 800 F.3d at 1041.

74. In a case in which an organization seeks an injunction, “it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured.” *Warth v. Seldin*, 422 U.S. 490, 515 (1975).

75. “Any burden on the right to vote” constitutes an injury. *See Common Cause of Colo. v. Buescher*, 750 F. Supp. 2d 1259, 1271 (D. Colo. 2010); *Charles H. Wesley Educ.*

1 *Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (stating that a plaintiff “need not
 2 have the franchise wholly denied to suffer injury”). Even where the “only obstacle to []
 3 voting” is filing out an additional form, “any additional barrier to voting imposed” that
 4 “would have been unnecessary had [the defendant] followed the law, satisfies any
 5 requirement of a concrete injury.” *Association of Cmty. Org. for Reform Now v. Scott*, No.
 6 08-CV-4084-NKL, 2008 WL 2787931, at *7 (W.D. Mo. July 15, 2008).

7 76. Here, Plaintiffs’ members have conducted or plan to conduct change-of-
 8 address transactions through ADOT/MVD. Because of Defendant’s failure to use the
 9 information from these transactions to automatically update voter registration addresses,
 10 Plaintiffs’ members must take separate and additional steps to ensure that: (1) their names
 11 appear on the voter roll at the correct precinct on Election Day so that they can cast a regular
 12 ballot at a polling place; or (2) receive an Early Ballot at their correct address so that they
 13 can vote by mail.

14 77. Because these injuries are germane to the Plaintiffs’ purposes, and Plaintiffs’
 15 individual members need not be party to this suit in order to have these injuries effectively
 16 addressed, Plaintiffs have associational standing.

17 **Plaintiffs are Entitled to Injunctive Relief**

18 78. This Court states that the test for a preliminary injunction is as follows:

19 In order to obtain a preliminary injunction, a movant must show that (1) [they
 20 are] likely to succeed on the merits, (2) [they are] likely to suffer irreparable
 21 harm in the absence of preliminary relief, (3) the balance of equities tips in
 22 their favor, and (4) an injunction is in the public interest. The Ninth Circuit,
 23 employing a sliding scale analysis, has also stated serious questions going to
 the merits and a hardship balance that tips sharply toward the [movant] can
 support issuance of an injunction, assuming the other two elements of the
Winter [balancing] test are also met.

24 *E*Trade Fin. Corp. v. Eaton*, 305 F. Supp. 3d 1029, 1031 (D. Ariz. 2018) (citations and
 25 quotations omitted).

26 **A. Plaintiffs Are Likely To Succeed On The Merits.**

27 79. Plaintiffs’ allegations demonstrate a high likelihood of success on the merits.
 28 Section 5 of the NVRA clearly requires that a voter’s registration address be automatically

1 updated whenever a voter reports a change of address to a motor vehicle agency unless the
 2 individual affirmatively chooses to “opt out.” 52 U.S.C. § 20504(d). A plain reading of
 3 Section 5 is all that is required to conclude that Plaintiffs stand to prevail on the merits.

4 80. There is “no language in the NVRA to suggest that *substantial compliance*
 5 with the Act is sufficient.” *Action NC v. Strach*, 216 F. Supp. 3d 597, 638 (M.D.N.C. 2016)
 6 (citations and quotations omitted) (emphasis added).

7 81. Moreover, Defendant does not dispute that she is in violation of the NVRA.
 8 [E.g., Response to Plaintiffs’ Application to Show Cause (Motion for Preliminary Injunction,
 9 Doc. 5) (8/31/18) (“Opposition”) at 4 (“for purposes of this litigation the Secretary of State is
 10 willing to accept the Plaintiffs’ position”); *id.* (conceding Defendant “is willing to accept”
 11 Plaintiffs’ position)] Instead, Defendant only attempts to justify her failures to comply with
 12 the NVRA. Accordingly, Plaintiffs are very likely to prevail on the merits.

13 **B. Plaintiffs Suffer Irreparable Harm.**

14 82. Absent injunctive relief, Plaintiffs’ members, together with thousands of
 15 Arizona voters, will suffer the irreparable harm of the risk of disenfranchisement in the
 16 upcoming federal elections.

17 83. An injury is irreparable when “it cannot be undone through monetary
 18 remedies.” *Scott*, 2008 WL 2787931, at *7.

19 84. Courts have regularly determined that violating a person’s right to vote is an
 20 irreparable harm with no adequate remedy at law because an individual cannot vote after an
 21 election has concluded. *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014) (“There is no right
 22 more basic in our democracy than the right to participate in electing our political leaders”);
 23 *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“The right to vote freely for the candidate of
 24 one’s choice is of the essence of a democratic society, and any restrictions on that right strike
 25 at the heart of representative government”); *League of Women Voters of U.S. v. Newby*, 838
 26 F.3d 1, 9 (D.C. Cir. 2016) (violation of NVRA is an irreparable harm); *League of Women*
 27 *Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“[c]ourts routinely
 28 deem restrictions on fundamental voting rights irreparable injury”); *Obama for Am. v.*

1 *Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (affirming district court's order granting
 2 preliminary injunction and explaining that when "constitutional rights are threatened or
 3 impaired, irreparable injury is presumed); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir.
 4 1986) (finding that the denial of the right to vote is "irreparable harm").

5 85. Courts routinely recognize that organizations suffer irreparable harm when a
 6 defendant's conduct causes them to lose opportunities to conduct election-related activities,
 7 such as registering new voters registration and providing voter education. *See, e.g., Action*
 8 *NC*, 216 F. Supp. 3d at 642–43 (finding irreparable harm where "Organizational Plaintiffs
 9 continue to divert resources to voter registration, sacrificing other voter mobilization and
 10 voter education efforts"); *North Carolina State Conf. of the NAACP v. North Carolina State*
 11 *Bd. of Elections*, 1:16-CV-1274, 2016 WL 6581284, at *9 (M.D.N.C. Nov. 4, 2016) (finding
 12 irreparable harm when NAACP had to "divert its finite and limited resources away from its
 13 planned voter-protection and education efforts"); *League of Women Voters of Fla. v.*
 14 *Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (holding that the plaintiffs' lost
 15 "opportunity to register [] voter[s]" is irreparable harm).

16 86. Plaintiffs have had to divert resources away from other organizational
 17 priorities—such as registering new voters, educating voters about candidates and ballot
 18 initiatives, and engaging in Get-Out-The-Vote efforts—to try to close the registration gap
 19 created by Defendant's failure to update the voter registrations of their members and the
 20 people that they serve.

21 87. Plaintiffs' affected members and other Arizona voters will suffer irreparable
 22 harm because if their address has not been updated and they cast a provisional ballot
 23 determined to be OOP, it will not be counted for any race. *See* A.R.S. §§ 16-122, 16-135,
 24 16-584.

25 88. Ballots cast by Plaintiffs' members and other Arizona voters who have moved
 26 to a new county but have not had their address updated will not be counted at all. *See* A.R.S.
 27 §§ 16-122, 16-135, 16-584.

28 89. Plaintiffs' members and other Arizona voters who have not had their address

1 updated will not be notified of the location of their new polling place as required by the
2 NVRA. *See* 52 U.S.C. § 20507(a)(2).

3 90. Plaintiffs' members and other Arizona voters who have signed up for PEVL
4 and who have not had their address updated will not receive their Early Ballot via mail. *See*
5 *Democratic Nat'l Comm. v. Reagan*, No. CV-16-01065-PHX-DLR, 2018 WL 2191664, at
6 *22 (D. Ariz. May 10, 2018).

7 91. "[N]o monetary award can remedy the fact that [a voter] will not be permitted
8 to vote in the precinct of her new residence." *Charles H. Wesley Educ. Found. Inc. v. Cox*,
9 324 F. Supp. 2d 1358, 1368 (N.D. Ga. 2004); *see also Fish v. Kobach*, 840 F.3d 710, 752
10 (10th Cir. 2016) ("[T]he right to vote is a constitutionally protected fundamental right.
11 When an alleged constitutional right is involved, most courts hold that no further showing of
12 irreparable injury is necessary") (citations and quotations omitted).

13 92. Because Plaintiffs' injuries cannot be remedied by monetary damages after the
14 election, the Court holds that Plaintiffs have suffered irreparable harm.

15 **C. The Harm Plaintiffs Will Experience In The Absence Of Preliminary**
16 **Relief Outweighs Any Burden To Defendant.**

17 93. Plaintiffs request that Defendant be required to: (a) instruct county recorders
18 to count OOP provisional ballots cast by affected voters, together with appropriate poll
19 worker training; and (b) mail a notice to individuals who changed their address with
20 ADOT/MVD since the last federal election.

21 94. Implementation of this requested relief is hardly a burden to Defendant.

22 **i. Provisional Ballot Counting.**

23 95. Plaintiffs first request that county recorders count provisional ballots by
24 eligible voters who reported a change to their address during a Covered Transaction with
25 ADOT/MVD since November 9, 2016, even if that ballot is cast out of precinct. Plaintiffs
26 request that the Court order Defendant to instruct County Recorders to count those votes for
27 all federal races a voter would have been eligible to participate in if the voter had voted in
28 the precinct corresponding to their new residential address, together with appropriate poll

1 worker training.

2 96. Plaintiffs' requested remedy does not require Defendant to adopt a new
3 election procedure. *See DNC*, 2018 WL 2191664, at *25.

4 97. Defendant contends that the counting of OOP ballots will be significant and
5 time consuming, involving several steps. [Opposition at 14]

6 98. There is no evidence in the record that the burden Defendant and County
7 Recorders may face in training election officials about how to process provisional ballots
8 pursuant to the relief required herein is significant.

9 99. Election officials will be employing the same process to count OOP ballots of
10 affected voters that they already use for ballots that cannot be read by an optical scan
11 machine. *DNC*, 2018 WL 2191664, at *25. Thus, election officials already have experience
12 with the requested relief.

13 100. Courts have regularly implemented similar provisional ballot relief on a much
14 tighter timeline, even within weeks of an election. *See Action NC*, 216 F. Supp. 3d at 647
15 (ordering relief on October 27 for the November 8 election requiring the counting of
16 provisional ballots that would be rejected under state law and recognizing that the relief was
17 not overly burdensome because an injunction would have "little, if any, impact on their
18 current process of verifying provisional ballots" because "county boards of elections already
19 verify every provisional ballot cast"); *Ohio A. Phillip Randolph Inst. v. Husted*, Case No.
20 2:16-cv-303, 2016 WL 6093371, at *4 (S.D. Ohio Oct. 19, 2016) (ordering relief on October
21 19 for the November 8 election and recognizing that the relief was not overly burdensome
22 because election boards were "already required to provide any individual who appears to
23 vote and whose name does not appear on the voter registration rolls with a provisional
24 ballot" and "already required to determine whether each person casting a provisional ballot is
25 qualified to vote").

26 101. The Court finds that Defendant has sufficient authority to implement the
27 requested relief.
28

1 **ii. Remedial Mailer.**

2 102. Second, Plaintiffs request that Defendant send a notice to all individuals who
3 have engaged in a Covered Transaction with ADOT/MVD since November 9, 2016. This
4 notice should (a) advise the individual that their voter registration address may be out of
5 date; explain that if they are on the PEVL they will not receive Early Ballots at the address
6 they reported to ADOT/MVD unless they have taken additional steps to update their voter
7 registration address themselves; (b) explain that if they intend to vote in person they will be
8 required to cast a provisional ballot if their voter registration address is not current; (c)
9 provide instructions for how to verify or correct their voter registration address; (d) provide
10 instructions for finding the correct polling place for their new address; and (e) provide a
11 blank voter registration form.

12 103. Defendant's assertion that sending such a mailer so close to an election would
13 be "confusing" to affected voters is unavailing, particularly because voters are already likely
14 to be confused about where they must vote or by having to cast a provisional ballot and
15 because Defendant has been on notice of her violations for more than nine months and has
16 had ample opportunity to correct it. *See Newby*, 838 F.3d at 14 (reversing district court's
17 denial of preliminary injunction and holding "[a]n agency should not be allowed to claim
18 that the confusion resulting from its own improper action weighs against an injunction
19 against that action").

20 104. The Defendant has presented no actual evidence of any confusion that this
21 mailer would cause.

22 105. Moreover, Plaintiffs have filed their Motion for Preliminary Injunction nearly
23 three months before the November 2018 General Election. Courts have ordered defendants
24 to implement relief to remedy violations of federal election law much closer to an impending
25 election. *See, e.g., Action NC*, 216 F. Supp. 3d at 647 (ordering relief on October 27 for the
26 November 8 election); *Husted*, 2016 WL 6093371, at *4 (ordering relief on October 19 for
27 the November 8 election); *United States v. Berks Cty., Pa.*, 250 F. Supp. 2d 525, 542-43
28 (E.D. Pa. 2003) (ordering injunction two months in advance of election); *Harris v. Graddick*,

593 F. Supp. 128, 138 (M.D. Ala. 1984) (18 days prior to election); *Arroyo v. Tucker*, 372 F. Supp. 764, 765 (E.D. Pa. 1974) (24 days prior to election); *Puerto Rican Org. For Political Action v. Kusper*, 350 F. Supp. 606, 608 (N.D. Ill. 1972) (eight days prior to election); *see also Chinese for Affirmative Action v. Leguennec*, 580 F.2d 1006, 1008 (9th Cir. 1978) (“shortage of time will not necessarily shield election officials from the diligent assertion of rights [under federal election law]”); *see also Fish v. Kobach*, 189 F. Supp. 3d 1107, 1124, 1152 (D. Kan. 2016) (granting preliminary injunction in NVRA case less than three months before election).

106. Courts have also regularly ordered similar relief to that requested by Plaintiffs to protect the rights of voters after states did not provide the required voter registration services under the NVRA. *See Scott*, 2008 WL 2787931, at *8 (ordering public assistance agency to contact any client it learned was not offered voter registration services and offer to register that client to vote); *National Coal. for Students with Disabilities v. Taft*, No. 2:00-CV-1300, 2002 WL 31409443, at *7 (S.D. Ohio Aug. 2, 2002) (ordering the Secretary of State to provide a notification to individuals affected by the NVRA violation).

107. The Agencies have already sent such a mailer to their affected clients. [Motion Counsel Decl., Ex. B at 2-3]

108. Given the feasibility of such a mailing and the precedent in other similar cases, the Remedial Mailer will constitute only a minor burden on Defendant. Moreover, any such burden is far outweighed by the countervailing harms to Plaintiffs, their members, and to the more than 500,000 Arizona voters who are at risk of disenfranchisement.

D. An Injunction Is In The Public Interest.

109. Plaintiffs’ strong likelihood of success on the merits “is a strong indicator that a preliminary injunction would serve the public interest”. *See Newby*, 838 F.3d at 12. There “is generally no public interest in the perpetuation of unlawful agency action” but there is a “substantial public interest” in having governmental agencies follow federal law. *Id.*

110. This is particularly true when it comes to the “important area of voter registration” where the public has a particular interest “in seeing that [a state] complies with

1 federal law.” *Cox*, 324 F. Supp. 2d at 1369; *see also Browning*, 863 F. Supp. at 1167
 2 (holding that vindicating voting rights and enforcing “a federal statute serve the public
 3 interest almost by definition”). Voting is a fundamental Constitutional right that is protected
 4 by the First Amendment (*John Doe No. 1 v. Reed*, 561 U.S. 186, 224 (2010)), and
 5 “injunctions protecting First Amendment freedoms are always in the public interest.”
 6 *Common Cause*, 2018 WL 2762552 at *13 (quotation omitted); *see also Purcell v. Gonzalez*,
 7 549 U.S. 1, 4 (2006) (finding that the public has a “strong interest in exercising the
 8 fundamental political right to vote”) (citation and quotation omitted).

9 111. Granting a preliminary injunction will permit more qualified Arizonans to vote
 10 by: (a) ensuring that no individual who was denied the right to have their voter registration
 11 address automatically updated is disenfranchised in the November General Election;
 12 (b) providing hundreds of thousands of Arizonans who reported a change of address to
 13 ADOT/MVD since November 2016 with the opportunity to update their voter registration in
 14 advance of the General Election; and (c) ensuring that voters either receive their Early Ballot
 15 to the correct address or locate the correct polling location to vote in person. The public
 16 interest is served by “permitting as many qualified voters to vote as possible” (*Obama for*
 17 *Am.*, 697 F.3d at 437) and “making it easier for citizens to register and vote.” *Browning*, 862
 18 F. Supp. 2d at 1167.

19 112. Third, granting this relief will promote, rather than hinder, the purposes of the
 20 NVRA, namely “establish[ing] procedures that will increase the number of eligible citizens
 21 who register to vote in elections for Federal office” and “ensur[ing] that accurate and current
 22 voter registration rolls are maintained.” 52 U.S.C. §§ 20501(b)(1), (4); *see also Indiana*
 23 *State Conference of the NAACP*, 2018 WL 2752564, at *13 (explaining that the public
 24 interest lies in “avoiding barriers to voter registration and increasing the number of eligible
 25 citizens registered to vote”).

26 113. In sum, the public interest strongly favors preliminary relief here. The Motion
 27 for Preliminary Injunction is granted.
 28

1 DATED this 6th day of September, 2018.

2 BRYAN CAVE LEIGHTON PAISNER LLP

3 By s/ Lawrence G. Scarborough

4 Lawrence G. Scarborough

5 Jessica R. Maziarz

6 Teresa P. Meece

7 Julie M. Birk

8 Two North Central Avenue, Suite 2100

9 Phoenix, Arizona 85004-4406

10 Kathy Brody

11 Darrell Hill

12 AMERICAN CIVIL LIBERTIES UNION OF
13 ARIZONA

14 P.O. Box 17148

15 Phoenix, Arizona 85011-0148

16 Sarah Brannon* **

17 Ceridwen Cherry*

18 AMERICAN CIVIL LIBERTIES UNION
19 FOUNDATION

20 915 15th Street NW

21 Washington, DC 20005-2313

22 Theresa J. Lee*

23 AMERICAN CIVIL LIBERTIES UNION
24 FOUNDATION

25 125 Broad Street

26 New York, New York 10004

27 Stuart Naifeh

28 DEMOS

80 Broad St, 4th Floor

New York, New York 10004

Chiraag Bains* **

DEMOS

740 6th Street NW, 2nd Floor

Washington, DC 20001

Jon Greenbaum*

Ezra D. Rosenberg*

Arusha Gordon*

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW

1500 K Street NW, Suite 900

Washington, DC 20005

* *Pro hac vice* applications forthcoming.

** *Not admitted in the District of Columbia;
practice limited pursuant to D.C. App. R. 49(c)(3).*

Attorneys for Plaintiffs

1 Filed electronically with the Court and
2 served on parties of record by the Court's
3 CM/ECF system this 6th day of September,
4 2018.

5
6
7
8 s/ Mary Ann Villa
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12117741